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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 1016

MILK WAGON DRIVERS' UNION, LOCAL 753, OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, ROBERT G. FITCHIE, J. G. KENNEDY AND STEVE C. SUMNER, EACH INDIVIDUALLY AND AS MEMBERS AND PRESIDENT, VICE-PRESIDENT AND SECRETARY-TREASURER, RESPECTIVELY, OF THE SAID LOCAL 753,

vs.

BERNARD FICHTER.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

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INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Summary statement of matter involved	2
Statement as to jurisdiction	5
The question presented	5
The reasons relied on for the allowance of the writ	6
Prayer for writ	7
Brief in support of petition for writ of certiorari	9
The opinion of the court below	9
Jurisdiction	10
The Federal question	10
Statement of the case	12
Specification of errors	13
Argument	14
Exhibit "A"	23
Exhibit "B"	27

Table of Cases Cited.

Brown v. *Mississippi*, 297 U. S. 278	6, 20
Brown v. *New Jersey*, 175 U. S. 172	6, 21
Frank v. *Mangum*, 237 U. S. 309	6, 20
Franklin v. *South Carolina*, 218 U. S. 161	6, 21
Garland v. *Washington*, 232 U. S. 642	6, 20
Herndon v. *Georgia*, 295 U. S. 441, 79 L. Ed. 1530	5, 11
Jenkins v. *Talbot*, 338 Ill. 441	17
Murphy v. *Novak*, 223 Ill. 301	18
Postal Telegraph-Cable Co. v. *Newport*, 247 U. S. 464	6, 20
Rawlins v. *Georgia*, 201 U. S. 638	6, 21
Rogers v. *Peck*, 199 U. S. 425	6, 20
Standard Oil Co. v. *Missouri*, 224 U. S. 270	6, 21
Saunders v. *Shaw*, 244 U. S. 317	6, 20
Shirley v. *Ellis Drier Co.*, 379 Ill. 105	15

Page

Strouder v. *West Virginia*, 100 U. S. 303 ..... 6, 21
Walker v. *Sauvinet*, 92 U. S. 90 ..... 6, 21
Washngton v. *Fairchild*, 224 U. S. 510 ..... 6, 20

STATUTES CITED.

Title 28 U. S. C. A., Section 344(b) (Judicial Code, Section 237 (b) as amended by the Act of February 13, 1925 ..... 5, 10
Fourteenth Amendment to the Constitution of the United States 13

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vs.

BERNARD FICHTER.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Justices of the Supreme Court of the United States:

Milk Wagon Drivers' Union, Local 753, of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Robert G. Fitchie, J. G. Kennedy and Steve C. Sumner, each individually and as members and President, Vice-President and Secretary-Treasurer, respectively, of the said Local 753, respectfully petition

for a writ of certiorari to review a decision of the Supreme Court of the State of Illinois, 46 N. E. 2nd 921, rendered January 19, 1943, and an order of said court entered March 9, 1943, denying a petition for rehearing of said decision.

A.

Summary Statement of Matter Involved.

Your petitioners are officers and members of a labor organization known as Milk Wagon Drivers' Union, Local 753, of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the American Federation of Labor. The respondent Fichter is a former member of such local union and was plaintiff below in the State court proceedings.

On November 17, 1937, plaintiff brought an action *ex contractu,* seeking to recover from appellants (defendants below) the sum of $3,193.00 claimed to be due as sick benefits under the by-laws of the union. Plaintiff had originally joined Milk Wagon Drivers' Union, Local 753, as a party defendant (R. 1), but upon motion such local was dismissed as a defendant (R. 6).

The plaintiff had become a member of the union in 1920. In 1928 he sustained an injury disabling him from employment. At the time of the injury, the by-laws of the union, adopted in 1922, provided for sick or disability benefits of $20.00 per week for each member in good standing and $2.00 per week extra apiece for a wife and all children under the age of 16 (R. 32-34). The union paid these benefits to plaintiff continuously from June, 1928, until October, 1937, the total amount paid amounting to a sum between $10,692 and $17,010. Prior to the time of the injury plaintiff had paid dues totalling approximately $312.00, but following the injury he was required to pay no dues. With the increase of the sick list and the con-

tinued dwindling away of the treasury approaching upon bankruptcy, the union members recognized that in setting up its benefit provisions without the benefit of previous experience and on a non-scientific basis they had made a great mistake (R. 82-83, 45). Accordingly, in December of 1935 the union amended its benefit by-laws in accordance with the procedure set up in the constitution for amendments, and the new by-laws were duly passed (R. 42-43). The amended by-laws omitted payments to wife and minor children and limited total benefits to twelve weeks for each year of continuous membership up to and including the tenth year. Members of over ten years' standing were entitled to benefits for full time of sickness (R. 11).

Following the amendment of the by-laws plaintiff was notified on January 1, 1936, that he would be entitled to additional payments for only ninety-two weeks more, and that the amount of his benefit was limited to $20.00 for each of these weeks. Plaintiff made no protest whatsoever concerning the amended by-laws or the amount paid him and each week went to the union in person to receive his benefit check, without making any objection to anyone (R. 76-77). On October 5, 1937, plaintiff came to the union office to obtain his last check, which he signed for, and at which time he was handed a withdrawal card which he accepted without protest (R. 29, 36-37, 72).

The first word of protest received by the union from the plaintiff was when the present suit was instituted.

The principal issues in the case were (1) whether the union had a right to amend its by-laws so as to reduce the rate of payment for sick benefits, and (2) whether plaintiff, by accepting payments under the amended by-laws, ratified them and created an accord and satisfaction of his claim, and whether a bona fide dispute concerning the claim ex-

isted so as to afford consideration for acceptance of a lesser sum in settlement of a greater sum.

The trial of the issues was had before a court and jury, and on December 14, 1939, a judgment was entered upon the verdict of the jury in favor of the defendants (R. 21, 48).

Plaintiff appealed the judgment to the Appellate Court, First District, of Illinois, which court affirmed the judgment of the Circuit Court (R. 50).

The plaintiff then appealed the case to the Supreme Court of the state, which court on September 21, 1942, rendered a decision unanimously affirming the judgment of the Appellate and Circuit Courts (R. 86).

Plaintiff then filed a petition for rehearing (R. 90). On January 19, 1943, the Supreme Court of Illinois issued a second decision in which the judgments of the Appellate and Circuit Courts were reversed and the cause remanded to the Circuit Court with directions to enter judgment in favor of the plaintiff on the theory that, since no dispute as to the amount of the claim existed, there was no consideration for plaintiff's acceptance of the lesser sum in payment of the larger sum claimed due him, and hence there was no accord and satisfaction. In its second decision the Supreme Court completely disregarded the finding of the jury that a bona fide dispute between the parties existed, which finding it had expressly determined in its first decision to be supported by competent evidence, so that the acceptance by plaintiff of a lesser sum than that claimed due was supported by consideration and created an accord and satisfaction (R. 115-123). (The first and second Supreme Court decisions are set forth in an appendix to the brief filed herewith as Exhibits "A" and "B" respectively.)

The defendants, on February 6, 1943, filed a petition for rehearing of this second decision, in which petition it

was alleged, among other things, that the failure of the Supreme Court to accord recognition of the jury finding that a dispute existed deprived defendants of trial by jury, of a proper hearing and of due process of law (R. 138). This petition was denied on March 9, 1943 (R. 144).

B.

Statement as to Jurisdiction.

Jurisdiction is invoked under Title 28, U. S. C. A., Section 344(b) (Judicial Code, Section 237 (b) as amended by the Act of February 13, 1925).

The judgment of the Supreme Court of Illinois was rendered January 19, 1943. Application for rehearing, timely filed, was denied March 9, 1943.

The federal question was one which could be raised for the first time only upon petition for rehearing from the second decision of the Supreme Court, for the reason that the grounds of such decision supplied a new, unexpected and theretofore unavailable basis for a claim of a denial of a federal right. (See *Herndon* v. *Georgia,* 295 U. S. 441, 79 L. Ed. 1530.)

C.

The Question Presented.

Does the refusal of the Supreme Court of Illinois in its second decision to recognize the verdict of the jury, finding the existence of a bona fide dispute between the parties, which finding was admittedly supported by competent evidence, deprive petitioners of property without due process of law by denying a trial by jury or a proper hearing?

D.

The Reasons Relied On for the Allowance of the Writ.

The grounds relied on by the petitioners for the allowance of the writ are:

1. The Supreme Court of Illinois, by denying the petition for rehearing of its second decision, in effect determined a federal question of substance—that property may not be taken without due process of law, which includes a proper hearing according to the usual procedure in the state courts and a recognition of proper and just findings where the hearing is before a jury—in a manner at variance with numerous decisions of this Honorable Court, namely, *Brown* v. *New Jersey,* 175 U. S. 172; *Rawlins* v. *Georgia,* 201 U. S. 638; *Brown* v. *Mississippi,* 297 U. S. 278; *Washington* v. *Fairchild,* 224 U. S. 510; *Saunders* v. *Shaw,* 244 U. S. 317; *Postal Telegraph-Cable Co.* v. *Newport,* 247 U. S. 464; *Frank* v. *Mangum,* 237 U. S. 309; *Garland* v. *Washington,* 232 U. S. 642; *Rogers* v. *Peck,* 199 U. S. 425; *Standard Oil Co.* v. *Missouri,* 224 U. S. 270; *Walker* v. *Sauvinet,* 92 U. S. 90; *Strouder* v. *West Virginia,* 100 U. S. 303; *Franklin* v. *South Carolina,* 218 U. S. 161.

2. It is of fundamental importance to the rights of citizens of the United States that issues of fact submitted to a jury for determination and in fact determined by the jury should be accorded recognition by the courts, if supported by evidence as the state supreme court in its first decision disclosed was the case. Trial of the issues by jury having been adopted by the parties pursuant to the Illinois practice, it is a denial of due process and a denial of a proper hearing to deprive either of the parties of the benefits of the jury's findings by court decree after the issues have been submitted and determined by the jury under competent evidence. To permit such a practice would afford

a method for avoiding the due process requirement of submitting contested issues to hearings before a trier of the facts, at which hearings the parties can be present to present or rebut evidence. Fundamental requirements of justice require that in such a case this Court intervene for the protection of rights guaranteed under the Constitution.

Prayer for Writ.

Wherefore, your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Clerk of the Supreme Court of Illinois, commanding that court to certify and send to this Court for review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled No. 26618, Bernard Fichter, Appellant, vs. Milk Wagon Drivers' Union, Local 753, of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Robert G. Fitchie, J. G. Kennedy, and Steve C. Sumner, each individually and as members and President, Vice-President and Secretary-Treasurer, respectively, of the Milk Wagon Drivers' Union, Local 753, of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, Appellees, and that the decree of the Supreme Court of Illinois may be reviewed by this Honorable Court and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

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